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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20544

In the Matter of)	
)	
<i>Computer III</i> Further Remand Proceedings:)	CC Docket No. 95-20
Bell Operating Company)	
Provision of Enhanced Service)	
)	
1998 Biennial Regulatory Review --)	CC Docket No. 98-10
Review of <i>Computer III</i> and ONA)	
Safeguards and Requirements)	

INTERMEDIA COMMUNICATIONS INC.
REPLY COMMENTS

Intermedia Communications Inc. ("Intermedia") hereby submits its Reply Comments in response to the Further Notice of Proposed Rulemaking in the above-captioned proceeding. In these Reply Comments, Intermedia addresses three main points:

1. The Commission should declare that, under the Communications Act,¹ all "basic services" are "telecommunications services" and that all "enhanced services" are "information services";
2. The Act assigns section 251 rights and obligations to telecommunications service providers, and not to end users, such as Information Service Providers ("ISPs"); and
3. Under its biennial regulatory review, the Commission should replace Bell operating company ("BOC") Comparably Efficient Interconnection ("CEI") plans with tariffs and eliminate the "all carrier rule" for non-dominant interexchange carriers ("IXCs").

¹ Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 *et seq.* ("Act")

I. The Commission should declare that, under the Act, all "basic services" are "telecommunications services" and that all "enhanced services" are "information services"

Intermedia supports the Commission and those commenters who agree that the definition of the Commission's term "basic service" is equivalent to the Act's definition of "telecommunications service." Intermedia also agrees with commenters² who suggest that the Act's distinction between "telecommunications service"³ and "information service"⁴ is essentially similar to the Commission's existing "basic service" and "enhanced service" distinction. To update the Commission's existing terminology to that of the Act, Intermedia submits that the Commission should declare that all services currently classified as "basic services" are "telecommunications services" under the Act and that all service currently classified as "enhanced services" are "information services" under the Act.

In making this finding, the Commission also should note that the definition of telecommunications (and basic) services also should apply to advanced loop technologies, including digital subscriber line ("DSL") technology. DSL technology should be regulated as a telecommunications service and be available to competitive local exchange carriers ("CLECs") as a 251(c)(3) unbundled network element and as a 251(c)(4) service for resale.

By making clear that DSL is a loop technology subject to 251 unbundling and resale obligations, the Commission will ensure that CLECs will continue to have access to BOC

² *E.g.*, AT&T at 7-9, CompuServe at 12-14. AOL at 5-8, Information Technology Association of America at 6-8.

³ 47 U.S.C. § 153 (46).

⁴ *Id.* at § 153 (20).

loops. DSL technology is being deployed extensively throughout the networks of both ILECs and CLECs. The BOCs will therefore be migrating more and more of their loop facilities to DSL technology in the coming years. Thus, unless the Commission affirmatively brings DSL loops under the section 251 umbrella, the BOCs could attempt to use this technology to construct a new bottleneck with which to constrain CLEC access to the local loop.

II. The plain language of the Act indicates that section 251 rights and obligations apply only to telecommunications providers, and not end-users, such as ISPs

Section 251 governs the relationships that exist among telecommunications carriers, and not end users, such as ISPs. As a general matter, section 251 requires telecommunications carriers "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."⁵ Section 251 does not require ILECs to provide unbundled network elements to non-carrier ISPs. ISPs that don't provide telecommunications services are end users, and not telecommunications carriers. Thus, under the plain language of the Act, the rights and obligations of section 251 do not apply to ISPs.⁶

Indeed, the Commission determined in its *First Interconnection Order* that enhanced service providers have no 251 rights.⁷ "We conclude that enhanced service providers

⁵ 47 U.S.C. § 251(a)(1).

⁶ GTE at 13, Public Utilities Commission of California at 1-2.

⁷ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, ¶ 995 (1996), *aff'd in part and vacated in part sub nom. Iowa Util. Bd. v. FCC, as amended on rehearing Oct. 14, 1997*, 120 F.3d 753 (8th Cir. 1997), *cert. granted*, 66 U.S.L.W. 3490 (U.S. Jan. 26, 1998) (Nos. 97-826, 97-829, 97-830, 97-831, 97-1075, 97-1087, 97-1099, 97-1141).

that do not also provide domestic or international telecommunications, and are thus not telecommunications providers within the meaning of the Act, may not interconnect under section 251.”⁸ In other words, section 251 applies only to telecommunications carriers. Nothing precludes an ISP from becoming a telecommunications carrier. But if an ISP wants 251 rights, it must take on 251 obligations as well.

III. Under its biennial regulatory review, the Commission should replace BOC CEI plans with tariff requirements and find that its rules implementing section 251(c)(5) supercede existing network disclosure rules

Intermedia supports the Commission’s effort to eliminate regulatory requirements that have become unnecessary or redundant over time. Accordingly, Intermedia agrees with commenters⁹ that support the Commission’s tentative decision to relieve the BOCs of their obligation to file CEI plans, provided, however, that the BOCs meet certain tariffing and network disclosure standards. For example, the Commission should continue to require the BOCs to file tariffs for all Open Network Architecture basic service elements (“BSEs”). Additionally, the Commission should continue to require that the BOCs disclose network changes. Finally, the Commission should continue to require the BOCs to publish annually a list of the BSEs that the BOCs use to provide their own information services.

Additionally, the Commission’s rules implementing section 251(c)(5) of the Act, which governs ILEC disclosure of network information, should replace the Commission’s *Computer II*, *Computer III*, and *ONA* network disclosure rules. As the Commission notes,

⁸ *Id.*

⁹ AT&T at 13.

section 251(c)(5) requires ILECs to disclose a wide array of technical and other information needed by CLECs and others, which has made the Commission's *Computer II*, *Computer III*, and *ONA* network disclosure rules redundant. Thus, Intermedia supports the Commission's tentative conclusion to replace the pre-Act rules with the Commission's 251(c)(5) rules.

Furthermore, the Commission should eliminate its "all carrier rule," which extended the *Computer II* network disclosure requirements to all carriers owning basic transmission facilities. As AT&T notes, the Commission adopted the "all carrier rule" in 1980. At that time, the BOCs dominated interexchange as well as local exchange markets. Since divestiture in 1984, however, the interexchange market has become highly competitive, and carriers compete aggressively for ISP traffic. IXC's have neither the incentive nor the means to gain any advantage over ISPs by withholding network information. Any attempt to withhold network information sought by an ISP would result in a lost sale, not anticompetitive discrimination. The "all carrier rule" simply has become unnecessary in the wake of interexchange competition, and, as such, the Commission should eliminate it.

IV. Conclusion

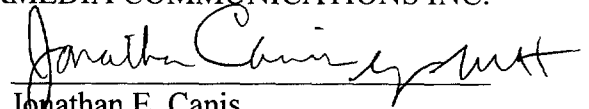
For the foregoing reasons, Intermedia recommends that the Commission: 1) declare under the Act that all "basic services" are "telecommunications services" and that all "enhanced services" are "information services"; 2) restate that pure ISPs have no section 251

rights; and 3) eliminate CEI requirements, network disclosure rules, and the "all carrier rule," as these regulations no longer are necessary.

Respectfully submitted,

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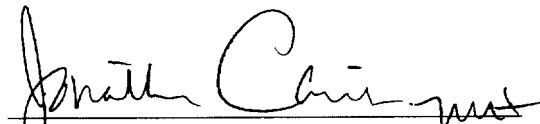
April 23, 1998.

CERTIFICATE OF SERVICE

I hereby certify that I have, this ____ day of April, 1998, served this day a copy of the foregoing REPLY COMMENTS OF INTERMEDIA COMMUNICATIONS INC. by hand delivery to the following:

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